

(vii) Such work is performed in a facility owned or operated by the contractor.

(2) Major modification of an item, piece of equipment, or material which is wholly or partially obsolete, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down.

(ii) Outmoded parts are replaced.

(iii) The item or equipment is rebuilt or reassembled.

(iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition.

(v) The work is performed in a facility owned or operated by the contractor.

(b) Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild as described in subparagraphs (a)(1) and (a)(2) of this subsection, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate (labor plus materials and parts) basis. Any contract principally for this type of work is subject to the Service Contract Act. Examples of such work include the following:

(1) Repair of an automobile, truck, or other vehicle, construction equipment, tractor, crane, aerospace, air conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment.

(2) Repair of typewriters and other office equipment (but see 22.1003-4(b)(4)).

(3) Repair of appliances, radios, television sets, calculators, and other electronic equipment.

(4) Inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment listed in subparagraphs (b)(1), (b)(2), and (b)(3) of this subsection.

(5) Reupholstering, reconditioning, repair, and refinishing of furniture.

22.1003-7 Questions concerning applicability of the Act.

If the contracting officer questions the applicability of the Act to an acquisition, the contracting officer shall request the advice of the agency labor advisor. Unresolved questions shall be submitted in a timely manner to the Administrator, Wage and Hour Division, for determination.

22.1004 Department of Labor responsibilities and regulations.

Under the Act, the Secretary of Labor is authorized and directed to enforce the provisions of the Act, make rules and regulations, issue orders, hold hearings, make decisions, and take other appropriate action. The Department of Labor has issued implementing regulations on such matters as—

(a) Service contract labor standards provisions and procedures (29 CFR part 4, subpart A);

(b) Wage determination procedures (29 CFR part 4, subpart B);

(c) Application of the Act (rulings and interpretations) (29 CFR part 4, subpart C);

(d) Compensation standards (29 CFR part 4, subpart D);

(e) Enforcement (29 CFR part 4, subpart E);

(f) Safe and sanitary working conditions (29 CFR part 1925);

(g) Rules of practice for administrative proceedings enforcing service contract labor standards (29 CFR part 6); and

(h) Practice before the Board of Service Contract Appeals (29 CFR part 8).

22.1005 [Reserved]

22.1006 Contract clauses.

(a) The contracting officer shall insert the clause at 52.222-41, Service Contract Act of 1965, as amended, in solicitations and contracts if the contract is subject to the Act and is (1) for over \$2,500 or (2) for an indefinite dollar amount and the contracting officer does not know in advance that the contract amount will be \$2,500 or less.

(b) The contracting officer shall insert the clause at 52.222-42, Statement of Equivalent Rates for Federal Hires, in solicitations and contracts if the

contract amount is expected to be over \$2,500 and the Act is applicable. (See 22.1016.)

(c)(1) The contracting officer shall insert the clause at 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), or another clause which accomplishes the same purpose, in solicitations and contracts if the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, as amended, and is a multiple year contract or is a contract with options to renew which exceeds the simplified acquisition threshold. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), applies to both contracts subject to area prevailing wage determinations and contracts subject to the incumbent contractor's collective bargaining agreement in effect during this contract's preceding contract period (see 22.1002-2 and 22.1002-3). Contracting officers shall ensure that contract prices or contract unit price labor rates are adjusted only to the extent that a contractor's increases or decreases in applicable wages and fringe benefits are made to comply with the requirements set forth in the clauses at 52.222-43 (subparagraphs (c) (1), (2) and (3)), or 52.222-44 (subparagraphs (b) (1) and (2)). (For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The contractor actually paid \$4.10. The new wage determination increases the minimum rate to \$4.50. The contractor increases the rate actually paid to \$4.75 per hour. The allowable price adjustment is \$.40 per hour.)

(2) The contracting officer shall insert the clause at 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, as amended, exceeds the simplified acquisition threshold, and is not a multiple year contract or is not a contract with op-

tions to renew. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor collective bargaining agreements (see 22.1002-2 and 22.1002-3).

(3) The clauses prescribed in paragraph 22.1006(c)(1) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination in connection with (i) exercise of a contract option or (ii) extension of a multiple year contract into a new program year. If a clause prescribed in 16.203-4(d) is used, it must not conflict with, or duplicate payment under, the clauses prescribed in this paragraph 22.1006(c).

(d) The contracting officer shall insert the clause at 52.222-47, Service Contract Act (SCA) Minimum Wages and Fringe Benefits, if—

(1) The clause at 52.222-41 applies;

(2) The contract resulting from the solicitation succeeds a contract for substantially the same services to be performed in the same locality;

(3) The incumbent contractor has negotiated or is negotiating a collective bargaining agreement with some or all of its service employees; and

(4) All applicable Department of Labor wage determinations have been requested but not received.

(e)(1) The contracting officer shall insert the clause at 52.222-48, Exemption from Application of Service Contract Act Provisions, in any solicitation and resulting contract calling for the maintenance, calibration, and/or repair of information technology, scientific and medical, and office and business equipment if the contracting officer determines that the resultant contract may be exempt from Service Contract Act coverage as described at 22.1003-4(b)(4).

(2) If the successful offeror does not certify that the exemption applies, the contracting officer shall not insert the clause at 52.222-48 and instead shall insert in the contract (i) the applicable Service Contract Act clause(s) and (ii) the appropriate Department of Labor

22.1007

wage determination if the contract exceeds \$2,500.

(f) The contracting officer shall insert the clause at 52.222-49, Service Contract Act—Place of Performance Unknown, if using the procedures prescribed in 22.1009-4.

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22.1007 Requirement to submit Notice (SF 98/98a).

The contracting officer shall submit Standard Forms 98 and 98a (see 53.301-98 and 53.301-98a), "Notice of Intention to Make a Service Contract and Response to Notice" and "Attachment A" (both forms hereinafter referred to as "Notice"), together with any required supplemental information to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210, for the following service contracts:

(a) Each new solicitation and contract in excess of \$2,500.

(b) Each contract modification which brings the contract above \$2,500 and—

(1) Extends the existing contract pursuant to an option clause or otherwise; or

(2) Changes the scope of the contract whereby labor requirements are affected significantly.

(c) Each multiple year contract in excess of \$2,500 upon—

(1) Annual anniversary date if the contract is subject to annual appropriations; or

(2) Biennial anniversary date if the contract is not subject to annual appropriations and its proposed term exceeds 2 years—unless otherwise advised by the Wage and Hour Division (see 22.1008-5).

22.1008 Procedures for preparing and submitting Notice (SF 98/98a).

22.1008-1 Preparation of Notice (SF 98/98a).

The contracting officer shall complete and submit the Notice in accordance with the instructions on the SF 98 and shall supplement it with information required under this section. Care should be taken to ensure that all re-

48 CFR Ch. 1 (10-1-97 Edition)

quired information is provided to avert return without action by the Department of Labor. The contracting officer shall retain a copy of the completed Notice and any required supplementary information until the signed and dated response to the Notice is received from the Department of Labor and placed in the contract file.

22.1008-2 Preparation of SF 98a.

(a) The SF 98a shall contain the following information concerning the service employees expected to be employed by the contractor and any known subcontractors in performing the contract:

(1) All classes of service employees to be utilized.

(i) If a wage determination is to be based on a collective bargaining agreement (CBA) (see 22.1002-3 and 22.1008-3), use the exact title shown in the CBA.

(ii) For other than subdivision (a)(1)(i) of this subsection—

(A) Use the exact title shown in the Wage and Hour Division's *Service Contract Act Directory of Occupations* (see paragraph (b) of this subsection).

(B) Provide an appropriate job title and job description if the Directory cannot be used.

(2) The estimated number of service employees in each class; and

(3) The wage rate that would be paid each class if employed by the agency and subject to the wage provisions of 5 U.S.C. 5341 or 5332 (see 22.1016).

(b)(1) The Wage and Hour Division's *Service Contract Act Directory of Occupations* (Directory) contains standard job titles and definitions (descriptions) for many commonly utilized service employee occupations. Contracting officers shall use this Directory to the maximum extent possible in listing service employee classes on the SF 98a. This usage will enhance the timely issuance of comprehensive wage determinations.

(2) If the job title contained in the Directory differs from that contained in the statement of work but the job definition (description) in the Directory and the statement of work match sufficiently, the contracting officer shall use the Directory job title.